IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. W.P. No. 891 of 2006

DATE OF DECISION : 20.11.2006

Shish Ram

.... PETITIONER

Versus

Union of India and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Sushil Gautam, Advocate,
for the petitioner.

Mr. N.S. Virk, Advocate,
for the Union of India..

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Petitioner Shish Ram, claiming himself as a friend of Saji Augustine, has filed this habeas corpus petition alleging therein that said Saji Augustine has been illegally detained and is in illegal custody of respondents No.4 and 5, and prayer has been made for issuing direction to the respondents to immediately release the said detenue from the illegal custody.

2. In the petition, it has been alleged that Saji Augustine had joined the Indian Air Force on 1.3.1986 and as per enrollment signed by the said detenue, he was to serve for 20 years, and after completion of 20 years, he was to be discharged from the service on 28.2.2006.

3. In the reply filed by the respondents, it is stated that before his discharge, the petitioner was named as an accused in FIR No. 45 dated 30.3.2005 registered at Police Station Nahiwala, District Bathinda, for theft of Air Craft Batteries from the valuable articles stores at Air Force Station, Bathinda. He was also arrested in the said case, trial of which is still pending. It is further stated that before the date of discharge, an order was

passed by the competent authority in exercise of the powers under Section 122 of the Air Force Act, 1950, withholding the discharge of Saji Augustine.

4. I have heard counsel for the parties.

5. It is the case of the petitioner that the said order of withholding the discharge order during the pendency of the disciplinary and criminal proceedings is not legal, therefore, detention of the said detenue after the expiry of 28.2.2006 is illegal. Undisputedly, the alleged detenue has not challenged the said order by filing any appeal or a writ petition under Article 226 of the Constitution of India. Without getting the said order set aside, the petitioner, who is friend of the alleged detenue, cannot maintain this petition on the plea that the order of withholding the discharge order is not legal and consequently, the detenue is deemed to be in illegal detention. When the order of withholding the discharge has been passed by the competent authority in exercise of the statutory power, the same cannot be presumed to be illegal, until and unless it is so declared by the competent court on the petition filed by the aggrieved person.

6. Dismissed.

November 20, 2006 **(SATISH KUMAR MITTAL)**
nt/ndj **JUDGE**